

MINUTES OF WORK SESSION  
OF THE NEWPORT NEWS CITY COUNCIL  
HELD IN THE 10<sup>th</sup> FLOOR CONFERENCE ROOM  
2400 Washington Avenue  
September 12, 2006  
3:30 P.M.

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PRESENT: Joseph C. Whitaker; Charles C. Allen; Herbert H. Bateman, Jr.; Joe S. Frank; William F. Haskins (arrived at 4:45 p.m.); Madeline McMillan (arrived at 3:39 p.m.); and Sharon P. Scott -----7

ABSENT: None -----0

OTHERS PRESENT: Neil A. Morgan; Stuart E. Katz; Mabel V. Washington; Iza Cieszynski; Butch Blanks; Allen Jackson; Joseph DuRant; Len Wallin, Len Ringler; Florence Kingston; Al Riutort; Sheila McAllister; Michael King; Britta Ayers; Gregg Jones; William Keeler; Everett Skipper; Tom Slaughter; Delegate Glenn Oder; George Paris; David Dickman; Brian Ramaley; Eileen Leininger; Chris Morrello; Mark Falin; Jack Williamson; Carl Jackson; Seth Freedland; Lottie Vincent; Cleder Jones; Kim Lee; and Jennifer Walker

I. Staff Presentation: Guidelines for Implementing the Public Private Transportation Act (PPTA)

Mr. Neil Morgan, Assistant City Manager, introduced Mr. Everett Skipper, Assistant Director, Department of Engineering, to report on the details of the guidelines for implementing the Public Private Transportation Act. (A copy of the Public-Private Education Facilities and Infrastructure Act of 2002 and the Public-Private Transportation Act of 1995 Combined Guidelines for the City of Newport News, Virginia is attached to these minutes.)

Mr. Skipper stated the Public-Private Transportation Act (PPTA) and the Public-Private Education Act (PPEA) were State legislated programs that encouraged innovative finance-design-build-operate partnerships between public entities and private entities with the goal of reducing costs and/or delivering key projects more quickly. The PPEA focused on public buildings, and the PPTA had a transportation emphasis. He noted there was significant interest among contractors and developers for applying PPTA approaches to the extension of Middle Ground Boulevard from Jefferson Avenue to Warwick Boulevard.

Mr. Skipper explained the PPTA allowed the responsible entity to receive proposals from design-built-type-teams to construct roadways for the public. They were usually projects already identified for funding in the six-year plans or were associated with toll roads so there was a future funding stream that could be attached. In order to participate in PPTA/PPEA programs, the City needed to adopt guidelines in accordance with State Code requirements, and agree to be the responsible entity for the involved projects. Some of the concerns with PPTA/PPEA projects were: 1) proposal evaluations could be difficult and expensive because financing was complex; and

2) the guidelines included a number of fees and the opportunity for the City to recover the costs if it decided to consider a proposal.

Councilwoman Scott stated she served as a government appointee on the State's Design-Build Review Management Board and inquired whether the City would be required to submit PPTA projects to the Board for approval. Mr. Skipper replied the City would not be required to submit PPTA projects to the Design-Build Review Management Board because PPTAs had specific exemptions and separate laws.

Mayor Frank inquired whether the word "and" on page 11, Item III.F, of the attached PPEA and PPTA Combined Guidelines, needed to be deleted from the text as it did not fit in the sentence. Mr. Len Wallin, Retired Chief Deputy City Attorney, replied the word "and" should be deleted.

Mayor Frank stated "secured parties," as noted on page 11, Item III.G.2, was not a defined term anywhere in the document. Mr. Wallin replied the City copied verbiage out of the State Code, and noted they did not have a definition either. Mayor Frank requested that the City Attorney research the term and whether it mattered.

Mayor Frank inquired how the appeal process would be conducted as related to Item V.A.1., last paragraph on page 13, "The decision of the City Manager may be appealed to the City Council." Mr. Stuart Katz, City Attorney, replied the City should define the appeal process and recommended that the City set up a timeline model.

Mayor Frank inquired why the City would return the "Initial Review Fee" as stated on page 14, Item V.B.2, considering funding had been expended for personnel and staff evaluation in determining whether the City wanted to move forward with the project. He did not understand why the City would refund the fee after going through the initial process rather than the conceptual process. Assistant City Manager Morgan felt the City would refund the fee in instances where the City would not take initial steps in evaluating the applicant's submission. Mayor Frank suggested that the language be changed to note the City would return the fee should the project be instantly rejected. Fee reimbursement should not be automatic, but should depend on how much time the City put into the project.

Mayor Frank stated there was no mention of federal permits as related to Item VI.B.8., on page 21. He indicated he had not seen a recent road project that did not need some type of federal permit.

Mayor Frank questioned the mention of liability and responsibility in the guideline document. He felt "compensable activities" as noted in Item VII.A, first

paragraph on page 23, put the City at risk for the cost before it had enough information to evaluate the project. Mr. Skipper replied the intent of the paragraph was to allow the City to go forth with the project. Mayor Frank had a concern about the “compensable activities” listed in Item VII.A. 1–7. He felt the applicant should bare the risk of the proposed project, and it should not be compensable unless the City decided to move forward with the project. He felt the City was including compensable too early in the process.

Mayor Frank inquired why the City would allow the applicant to be self-insured as it related to item VII.B.4 on page 23. He felt self-insurance was not adequate for PPEA/PPTA projects and suggested the City require the developer to obtain liability insurance. City Attorney Katz stated the verbiage was taken from the State Code and he would amend the Act.

Councilman Bateman inquired whether there was a clause in the Act to revert the project’s ownership to the City in the event of default by the developer. Mayor Frank stated that might be the last thing the City wanted should the project have a major flaw. Mayor Frank indicated the City should not automatically be liable for the project; but should be in a position to evaluate the project and the decision of whether to obtain liability of the project.

Mayor Frank questioned what happened should the developer go bankrupt. He suggested the City require the developer to have performance bonds. Mr. Skipper stated the City did require standard bond issuances and a personal guarantee as stated in Item V. D. on page 25 of the proposed Act.

Mayor Frank inquired why the City would want to assume the risk of “subsurface conditions” as suggested in Item V.C.2. on page 25. Mr. Skipper replied it was a negotiation item depending on the values and risks of the project. Mr. Morgan stated the reason for adopting a set of guidelines for the PPEA/PPTA was to look at instances where developers could build at lower costs. Mayor Frank inquired why the City would agree to assume the risk of “subsurface conditions” upfront.

Vice Mayor Allen felt when the City hired a developer, it expected the developer to handle investigation procedures. He did not understand what an “ordinary standard” was when it should be the delivery of a safe structure by a developer.

Mayor Frank thanked staff for their work on the Act. Mr. Skipper stated he and staff would revise the Act for presentation and consideration at a later meeting of City Council.

II. Conditional Use Permit CU-05-177, World Outreach Worship Center (Oasis Tower)

Mr. Morgan introduced Mr. Al Riutort, Director, Newport News Planning Department, to report on the status of the Oasis Tower.

Mr. Riutort stated the analysis and findings from the *Allocation Study and Engineering Review* was presented at the City Council Work Session on June 27, 2006, as well as draft conditions. He stated the study concerned the impact of the proposed radio tower on interference with the City's emergency communications system, human exposure concerns, and radiation affects at the Lee Hall Water Treatment Plant. He reminded that Mr. James Smith, Executive Director, and Mr. Mark Falin, Airport Manager, had presented the Newport News/Williamsburg International Airport's objections to the proposed tower. Their concerns were that the tower would be an additional obstruction in the Airspace Protection Zone, which could hinder the planned airport expansion and raise airport flight minimums. Mr. Riutort reported, as a result of the airport's concerns, City Council acted to defer the Conditional Use Permit until the regular meeting of September 9, 2006. He stated the firm of Campbell & Paris Engineers were hired to examine the potential impacts on the planned expansion. He introduced Mr. George Paris, President of Campbell & Paris Engineers, to present his findings and recommendations on the Tower. (A copy of his report is attached and made a part of these minutes.)

Mayor Frank inquired about what impacts a 350-foot tower would have on the operation of the City's computer system at the Lee Hall Reservoir. Mr. Riutort replied Mr. Dickman noted it would make things worse.

Councilman Bateman stated in addition to being a member of City Council, he was a member of the Peninsula Airport Commission, which operated the Newport News/Williamsburg International Airport. He stated the Virginia Conflict of Information Act prohibited an elected official from participating in a transaction considered by the governing body when a conflict of interest existed. The Virginia law indicated that such a conflict existed when a vote cast by an elected official may reasonably realize a direct or indirect benefit or detriment to another entity that he represented. The proposed 400-foot Radio Tower was identified as presenting such a detriment to the Airport, and for that reason he declared he would abstain from participating in the discussion or vote on the issue.

Mr. Paris stated the technical approach used for his analysis was the same set of standards that were used by the Federal Aviation Administration (FAA). He stated his results were based on factual information and were non-opinionated. He

noted he was using the most current layout plan of 2002, which reflected the planned parallel runway and extensions of the two existing runways at the airport, which had been approved by the Virginia Department of Aviation and the FAA.

Mr. Paris stated it would not be in the City's best interest to support construction of a tower that had been judged by FAA to be a hazard or have an adverse effect. He stated it was clearly in the City's best interest to independently evaluate cases such as these when the FAA's determination may be limited by standards that were prescribed by their agency policy and rules. Based on the results of the independent analysis (which was based on the FAA evaluation criteria) and in conjunction with the Virginia Department of Aviation recommendations, Mr. Paris recommended that the City exercise its own prerogative consistent with its conditional use permitting process to deny the conditional use permit number CU-05-177 because the construction of the proposed tower would create an "obstruction to air navigation" which would cause an "adverse effect" on the continued safe operation of the Newport News/Williamsburg International Airport.

Councilwoman McMillan stated the FAA's proposal would be based more on the higher tower than the proposed towers. Mr. Paris stated he was of the opinion that the 467' tower needed to be resolved before the full development of the airport could happen.

Councilwoman McMillan stated the expansion of the runway and all the facts presented were based on the higher tower than the proposed tower, since that was the one that would be the greater obstruction. Mr. Paris felt it was clear, based on research conducted, that the build-out of the airport, according to the layout plan, could not happen until the 467' tower was eliminated.

Vice Mayor Allen stated he understood Mr. Paris to mean if the City intended to enlarge the airport, it would compound the issue of expansion by allowing an additional tower to be built. Mr. Paris stated that was a very important concept in the way the FAA did its evaluation. The FAA noted one of the factors in arriving at their conclusion that the radio tower would not pose a substantial adverse impact was because of surrounding towers already present at the site. But the FAA's analysis did not consider what would happen if the City undertook a plan to eliminate the 467' tower already located at the site.

Vice Mayor Allen inquired of the FAA's record in allocating funding to sites that were not approved and considered unacceptable. Mr. Paris replied the FAA might help the City and the Airport with the necessary funds to remove the 467' tower as part of the airport development plan.

Councilwoman Scott inquired whether it would be the responsibility of the FAA to rule removal of a tower, and the process of removal. Mr. Paris replied the FAA's scope of responsibility was to look at matters from the standpoint of what was safe. The FAA had no authority to rule on the removal of a tower. The FAA got that accomplished by going to the airport sponsor who accepted the grant and allowed a tower to be built.

Mayor Frank understood there were only two risks to build the radio tower. The first was federal approval to extend or build the third runway if the FAA, determined the radio tower hazardous; and second, if extensions were accepted by the FAA they might create airspace uses that were not attractive to commercial airlines in terms of landing patterns. Mr. Paris agreed that if the radio tower were constructed, the FAA would be obligated to develop an approach procedure that would make it safe for the two towers to exist. It would be a safe use of the airspace, but not a convenient use of the airspace.

Councilwoman McMillan inquired about other potential physical and natural hazards. Mr. Paris replied anything that reached the elevation of 435', i.e., a tall tree, a structure, and a sign.

Mr. Paris further recommended that the City update the airport zoning ordinance language to better identify the scope of the overlapping complex technical issues and the extent of the surrounding airspace that needed to be evaluated when considering the construction of future tall structures in the airport area.

Delegate Glen Oder stated the applicant had received a letter from the FAA noting a no hazard determination in construction of the radio tower. He noted there were multiple towers and all were without any conditions. He and the applicant were willing to succumb to conditions by the City in order to come to an approval process which would allow construction of the tower. He and the applicant felt they could build the tower at 400', which would not affect anything at the airport. They would be willing to lower the tower to 350' should the FAA require removal because of runway extensions or a new runway at the airport. The applicant would also post a performance bond that would indicate the amount of funding set aside.

Mayor Frank inquired whether Delegate Oder and the applicant would agree to reducing the Tower to 350' if it was demonstrated that it would not interfere with the existing Emergency Communications Tower and the Waterworks operations. Delegate Oder stated he would speak to the applicant and report back to City Council.

Mayor Frank inquired whether there was consensus on City Council to approve the tower if it was reduced to 350', which would entail a new study to confirm its safety.

Councilwoman McMillan felt City Council was yanking chains because all through the process different issues have surfaced. She stated she took the original report and went through it with a fine tooth comb and spoke to three pilots who flew out of Newport News/Williamsburg International Airport who stated that a 400' foot tower and the radio signal would provide no obstructions to the airport. She felt Delegate Oder may want to go back to his clients to see how long they wanted to have their chain yanked, before the City went forth to have an additional study done, regarding lowering the height of the tower to 350'.

Councilman Whitaker stated it bothered him that doubt still existed. He stated he was not prepared to vote in favor of the 400' radio tower because of continued doubt.

Vice Mayor Allen stated he was not in favor of the tower at 400' due to the safety of the airport, irrespective of it being lowered to 350'. He felt the tower should be relocated to another position.

Councilwoman Scott felt Delegate Oder and the applicant wanted closure of the matter and stated it was time for City Council to make a decision.

Delegate Oder stated all the engineering and radio frequency reports noted the tower posed no danger at 400'. He stated the only issue left was the height of the tower.

Mayor Frank expressed concern about the airport if the radio tower was 400' and a concern about the emergency tower and the impact on Waterworks if the radio tower was 350'. He suggested a study be done on the impact to the airport and interference of the Communications tower and Waterworks for a tower at 350' so that the issue of permitting the tower could be eliminated.

Councilwoman Scott inquired about the number of listeners that would be lost to the Oasis Network if the City allowed a 350' tower instead of the 400' tower. Mr. David Dickman of du Treil, Lundin & Rackley, Inc., stated FCC regulations limit the maximum power for a Class B- FM station to a maximum of 50 kilowatts in Virginia. If the Tower was decreased by 50' the radio station would lose coverage because they could not increase their power to make up the coverage they would lose in dropping the height of the tower. Due to a reduction in height, the predicted interference to stations further away would be lessened.

Mayor Frank inquired whether the applicant could reduce the height of the tower to 350', and broadcast to reach the population they desired, without

interfering with the broadcast capacity of the emergency tower and impacting negatively the on Waterworks computer system. Mr. Dickman stated the City would have to conduct another study to answer those questions.

### III. Emergency Operations Plan Update

Assistant City Manager Morgan introduced Mr. Jack Williamson, Coordinator, Emergency Management, to report on the 2006 revision of the Newport News Emergency Operations Plan (EOP). (A copy of the Draft Emergency Operations Plan is attached and made a part of these minutes.)

Mr. Williamson reported the purpose of the EOP was to provide an all hazards, Citywide response to widespread disasters and emergencies that exceed the capacity of any one department, such as the Fire or Police Department. He stated the EOP served as a directive to activating the Newport News Emergency Operations Center as well as general instructions for participating City departments responsible for completing specific Emergency Support Functions (ESF). He introduced Mr. Carl Jackson, Emergency Operations Planner, Office of Emergency Management, to present the basic guidelines to take during disasters. (A copy of the presentation is attached and made a part of these minutes.)

Mr. Jackson stated the purpose of the EOP was to establish the legal and organizational basis for emergency and disaster operations; provide an all hazards Citywide response to widespread disasters and emergencies; and, in accordance with the Virginia Disaster Law, the 2006 EOP required Council adoption of the Resolution.

Mr. Jackson stated the last update to the EOP was made in 2001 and the last complete revision to the EOP was made in 1997. All updates and amendments made to the EOP since that time, including a complete revision, have been incorporated into the 2006 EOP. In accordance with the Virginia Disaster Law, the 2006 EOP required adoption of a Resolution coordinated and developed by the Office of Emergency Management in concert with City departments and the City Attorney's Office. Mr. Jackson asked for City Council's approval of the 2006 EOP revision so that the City could continue to work with the State and be in accordance with the Virginia Disaster Law.

Councilwoman McMillan stated her concern was there still were no shelters in the Lee Hall area. She stated when looking at the Mass Care map in the EOP, all of the shelters, with the exception of Hines Middle School, were located off of Warwick Boulevard. She felt that was very problematic because there might not be a way to crossover to Warwick Boulevard, such as what happened during Hurricane Floyd. Mr. Jackson stated a shelter analysis was being conducted. The City recognized there were not enough facilities, and he indicated Dozier Middle School was becoming a

shelter and Emergency Communications was looking at Woodside High School and various community and recreation centers to be used as shelters.

Councilwoman McMillan inquired whether the City coordinated with James City County for residents of Newport News to go to a County shelter. Mr. Williamson replied the City did coordinate with James City County periodically, depending on the stage of an emergency.

Councilwoman McMillan expressed her concern for the elderly residents in the Lee Hall area. She inquired about where the residents would go should another hurricane make landfall in Newport News. Mr. Williamson stated he was not able to answer her questions until the EOP was finalized.

Councilwoman McMillan inquired whether the City had plans to rent or obtain portable shower facilities, or perhaps utilize facilities with showers. Mr. Williamson replied there was no written plan in place to address the issue of showers. He hoped the City would stay away from facilities that did not have showers.

Councilwoman McMillan indicated if the City could obtain portable showers, they could possibly utilize a warehouse facility in Oakland Industrial Park. Assistant City Manager Morgan stated they had checked out portable showers, during Ernesto, and the City was not able to obtain the showers in time to make a difference. He stated that could be an amendment to the EOP.

Mayor Frank advised if the City accepted the responsibility of putting citizens in shelters it accepted the responsibility of protecting them. It seemed selecting shelters based on geographic locations and not looking at the construction and capacity issues was not a fully developed approach to addressing the problem. He suggested that staff get a different set of eyes, i.e. a person or a group of people, to review the EOP to see if there were any issues missed, and any new points to be added. Assistant City Manager Morgan noted that most department of City government had been involved in creating and reviewing the EOP. He stated it would have to be someone outside of the City to review the plan. Mayor Frank reiterated that something as important as the EOP should have a different set of eyes to review it.

Vice Mayor Allen stated the point Councilwoman McMillan made in having adequate shelters in certain portions of the City was interesting. He stated, in the process of planning for the North District Community Center, it would seem that a part of the planning would be done in cooperation with Emergency Services to ensure that the building elevation was high enough, and equipment was made available, to withstand a natural or manmade disaster. Vice Mayor Allen stated he was appalled when he learned that Heritage High School was not an acceptable shelter because of the floor level and that residents were housed at the Doris Miller Center without showers. He suggested, in planning for the future, the City should consider the problems and include them in the structure of the buildings.

Councilwoman McMillan agreed with Vice Mayor Allen and indicated her concern was that residents were not able to get to shelters during Hurricane Floyd because they could not get pass Fort Eustis Boulevard.

Dr. Rhonda Sturgis, Deputy Director, Emergency Management, stated the City was working on getting a shelter north of Fort Eustis Boulevard. She stated the Engineering Department was involved in amending the EOP to include more facilities.

Vice Mayor Allen suggested that while the EOP was critical the plan needed to be amended immediately with a shelter that could withstand a storm and have capacity for emergency equipment and materials. Mayor Frank agreed that the plan should be updated immediately.

#### IV. Proposed Charter Amendments

Mayor Frank inquired whether there was consensus among City Council to move forward with the amendments and have the City Attorney develop specific resolutions to deal with each. There was consensus among City Council to move forward with the proposed charter amendments.

THERE BEING NO FURTHER BUSINESS  
ON MOTION COUNCIL ADJOURNED AT 5:09 P.M.

Jennifer D. Walker, CMC  
Chief Deputy City Clerk

Joe S. Frank  
Mayor

A true copy, teste:

City Clerk